

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals of the District of Columbia.

JANUARY TERM, 1923.

No. 3944. 976

EUGENE MORGAN, APPELLANT,

vs.

**ALBERT W. HOWARD, SECRETARY OF THE FIREMEN'S
INSURANCE COMPANY OF WASHINGTON AND GEORGE-
TOWN, D. C.**

**APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.**

FILED JANUARY 16, 1923.

PRINTED FEBRUARY 1, 1923.

Court of Appeals of the District of Columbia.

JANUARY TERM, 1923.

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EUGENE MORGAN, APPELLANT,

vs.

ALBERT W. HOWARD, SECRETARY OF THE FIREMEN'S
INSURANCE COMPANY OF WASHINGTON AND GEORGE-
TOWN, D. C., APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

INDEX.

	Original.	Print.
Caption	a	1
Petition for mandamus.....	1	1
Exhibit "A".....	5	3
Return of respondent.....	7	5
Demurrer to return.....	13	8
Order overruling demurrer; exception.....	14	9
Order dismissing petition; judgment; appeal noted.....	14	9
Memorandum: \$50 deposited in lieu of undertaking on appeal..	15	9
Assignment of errors.....	15	9
Designation of record.....	15	10
Clerk's certificate.....	17	10

Journal of the United States Fish Commission

Vol. 10, No. 1, 1900

Washington, D. C.

Court of Appeals of the District of Columbia.

No. 3944.

EUGENE MORGAN, Appellant,

vs.

ALBERT W. HOWARD, Secy., &c.

a Supreme Court of the District of Columbia.

At Law.

No. 66881.

EUGENE MORGAN, Petitioner,

vs.

ALBERT W. HOWARD, Secretary of the Firemen's Insurance Company of Washington and Georgetown, D. C., Respondent.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above entitled cause, to wit:

1 *Petition for Mandamus.*

Filed August 7, 1922.

In the Supreme Court of the District of Columbia.

At Law.

No. 66881.

EUGENE MORGAN, Petitioner,

vs.

ALBERT W. HOWARD, Secretary of the Firemen's Insurance Company of Washington and Georgetown, D. C., Respondent.

The petition of Eugene Morgan respectfully represents:

(1) That he is a citizen of the United States, a resident of said District, and files this petition in his own right.

(2) That the defendant is a citizen of the United States, a resident of said District, and is sued as the Secretary of the Firemen's Insurance Company of Washington and Georgetown, a corporation under the laws of said District.

(3) That the said Insurance Company was originally created under the provisions of the Act of Congress of March 3d, 1837, to remain in force until June 1st, 1858, and the life of such corporation was subsequently extended by the Acts of Congress approved February 7th, 1857, and March 3d, 1887, and expired by limitation on June 1st, 1908.

(4) That on the 12th day of March 1908, said corporation filed in the office of the Recorder of Deeds, under section 641 of the Code of Laws then in force in said District, its certificate of incorporation for the purpose of becoming perpetual; the said section 641 being as follows: "Title and Fire Insurance Companies May Become Perpetual. Any company heretofore formed, agreeable to law, for the purpose of insuring titles to real estate, or for the purpose of carrying on fire insurance, may become perpetual by filing, in the office of the recorder of deeds, a certificate to that effect, in like manner as is provided by law for the filing of the original certificate of incorporation." That a copy of the above said certificate is attached hereto and marked "Exhibit A."

(5) That by virtue of filing said certificate, said company became a corporation under the terms and provisions of Subchapter IV of the said Code of Laws; which provide that it shall be the duty of the trustees of corporations formed under said subchapter to cause a book to be kept by certain of its officers containing the names of all persons who are stockholders of such company, showing their place of residence, the number of shares held by them respectively, the time when they became the owners of such shares, and the amount of stock actually paid in.

(6) And this petitioner alleges that said company caused said stockbook to be kept, and the custody thereof to be kept in the control and supervision of the respondent herein who is the Secretary of said company and has charge and control of said book and the right to determine in accordance with law who shall or shall not inspect the same, and it thereby became the duty of said respondent to permit any stockholder of said company to inspect and make extracts from said book.

(7) That by section 628 of said Subchapter IV it is provided that—"Such book shall, during the usual business hours of the day, on every business day, be open for the inspection of stockholders and creditors of the company and their personal representatives, at the office and principal place of business of such company in the District where its business operations shall be located, and any stockholder, creditor, or representative shall have a right to make extracts from such books."

(8) That in section 631 of said Subchapter IV it is provided that every officer or agent of any company who shall neglect or refuse to exhibit said book, or allow the same to be inspected and extracts to be taken therefrom, shall be deemed guilty of a misdemeanor.

(9) That on the 5th day of August, 1922, said petitioner was the owner of record of 140 shares of the capital stock of said Firemen's Insurance Company of Washington and Georgetown, D. C., and as such shareholder, on said day, during the business hours thereof, presented himself at the office or principal place of business of said company, namely, the office situate at seventh street and Louisiana Avenue, Washington, District of Columbia, and then and there demanded of the said respondent, secretary of the same and having charge of said stock-book, the privilege of inspecting and making extracts from the same; but the said respondent acting as such custodian, then and there in response to said demand absolutely refused to permit said petitioner to inspect said book and make extracts therefrom; all — which was in violation of the rights of said petitioner as a stockholder of said company.

4 The premises considered, this petitioner prays that the writ of this may issue, directed to the said respondent, commanding him to show cause why the petitioner should not be permitted to inspect said stock-book and make extracts from the same, and that upon a hearing of said petition and the return thereto, that a mandamus be granted commanding the respondent to permit the petitioner to inspect said stock-book and make extracts from the same.

That he may have such other relief as to the Court may seem proper.

EUGENE MORGAN.

JAS. E. PADGETT,
Atty.

DISTRICT OF COLUMBIA, ss:

Eugene Morgan being first duly sworn, says, that he has read the above petition by him subscribed, and knows the contents thereof, and that the facts therein stated are true as he verily believes.

EUGENE MORGAN.

Subscribed and sworn to before me this 7 day of August, 1922.

MORGAN H. BEACH,
Clerk,

By CHAS. B. COFLIN,
Asst. Clk.

5

"EXHIBIT A."

This certificate is to make known and declare to all whom it may concern, That the President and Directors of the Firemen's Insurance Company of Washington and Georgetown in the District of Columbia, a corporation organized under an act of Congress approved March 3d, 1837, and extended by Acts of Congress approved February 7th, 1859, and March 3, 1887, with a capital stock of Two Hundred Thousand Dollars for the purpose of making all kinds of insurance against fire within the limits of the County of Washing-

ton in the District of Columbia, hath and doth hereby become perpetual and shall henceforth have perpetual succession as fully and to all intents and purposes as if said company had been originally incorporated as a perpetual corporation.

This certificate is made pursuant to the provisions of section 641 of the Code of the District of Columbia, and agreeably to the directions contained in a resolution passed at a special meeting of the stockholders of said company held at its office in the City of Washington in the District of Columbia on the seventeenth day of February 1908 pursuant to notice given to said stockholders as prescribed by law as will appear from the records of said company in its said office.

Given under our hands and seals this 4th day of March, 1908.

E. G. DAVIS,
MAURICE J. ADLER,
FRED C. AINSWORTH,
ALLAN E. WALKER,
GEORGE W. MOSS,
SAMUEL S. LUTZ,
R. A. CASILEAR,
WM. J. WILSON,
ROGER T. MITCHELL,
JOHN QUINN,
HENRY C. McCAULEY,
EDWIN D. JONES,
ED DERRICK,

President and Directors of the Firemen's Insurance Company of Washington and Georgetown, in the District of Columbia.

6 DISTRICT OF COLUMBIA, *To wit:*

I, Elbert G. Davis, having been duly sworn, make oath and say: That I was duly elected chairman of a special meeting of the stockholders of the President and Directors of the Firemen's Insurance Company of Washington and Georgetown in the District of Columbia held on the seventeenth day of February 1908 as set forth in the foregoing and annexed certificate; That I have read the said certificate signed by me and know the contents thereof; That the allegations therein set forth are true to the best of my knowledge, and belief.

ELDRED G. DAVIS.

Subscribed and sworn to before me this 4th day of March, 1908.
[SEAL.]

ERSKINE GORDON,
Notary Public, D. C.

District of Columbia, To wit:

On the 10th day of March, A. D. 1908, before me came Frederick C. Ainsworth, Maurice J. Adler, Raphiel A. Casalier, Edward Derrick, Eldred G. Davis, Edwin D. Jones, Samuel S. Lutz, George W.

Moss, Roger T. Mitchell, Henry McCauley, William J. Wilson, Allen E. Walker; and John Quinn, who are personally well known to me to be the persons who signed the annexed certificate dated on the 4th day of March 1908, and acknowledged the same to be their act and deed and the act and deed of the President and Directors of the Firemen's Insurance Company of Washington and Georgetown in the District of Columbia.

7 Given under my hand and Notarial Seal.

[SEAL.]

ERSKINE GORDON,
Notary Public, D. C.

Return of Respondent.

Filed August 18, 1922.

* * * * *

To the honorable justices of said court:

The return and answer of Albert W. Howard, respondent herein, states as follows:

1. He admits that the allegations of paragraph one of the petition are substantially true and is advised that formal inaccuracies are not material.

2. Respondent makes the same admission of the truth of paragraph two of the petition.

3. The allegations of the third paragraph are admitted, except that this respondent denies that the life of said corporation expired by limitation on the first day of June, 1908.

4. This respondent avers that the said Firemen's Insurance Company of Washington and Georgetown, District of Columbia, availed itself of the right under Section 641 of the Code of Laws of the District of Columbia, to become permanent in its existence by filing the appropriate certificate under such section aforesaid and by virtue of the submission of the company to the regulation of the Insurance Department of the District of Columbia, the said company's books and records have always been available to the said department, including its stock list.

8 5. This respondent denies the allegations of the fifth paragraph of the petition, that the Firemen's Insurance Company of Washington and Georgetown, District of Columbia, became a corporation under the terms and provisions of sub-chapter 4, of Chapter 18 of the Code of Laws of the District of Columbia. On the contrary the said Insurance Company has had its corporate existence continued by special Acts of Congress, all of which are here shown to the Court, said last Act having been approved by the President of the United States on the 18th day of February, 1911.

This respondent avers upon his oath that the said Insurance Company has always kept a book containing the names of persons who are stockholders of the said Company, showing their place of residence, the number of shares held by them respectively, the time when they became the owners of such shares, and the amount of stock actually paid in, which said books have always been in the

custody and possession of your respondent, as Secretary of said Company.

6. As heretofore alleged, this respondent admits that the said stock book or list has been kept and that your respondent is the Secretary of said Company and has charge and control of said books, and in relation thereto, your respondent avers that while he has always been ready to afford access to any of the books of said Company upon proper occasion shown therefor, it is not his duty, but is contrary to the obligation which he owes to the Company and the other stockholders, to furnish access to said books to any stockholder who does not show himself to be and is not seeking the same upon proper occasion and just cause, but is doing so for speculative, ulterior and improper motives contrary to the best interests of the Corporation and its stockholders.

9 7. This respondent is advised and believes and upon such advice and belief denies that the provisions of Section 628 of Sub-chapter 4 of Chapter 18 of the Code of Laws of the District of Columbia have any application whatsoever to the Insurance Company, of which Respondent is Secretary.

8. Answering the allegations of the 8th paragraph of the said petition, this respondent calls attention to the failure of the petitioner to fully set forth the provisions of Section 631 of the said District Code, and so far as the same may be material, respondent refers for more accuracy to the said section of the Code.

9. This respondent admits that on the 5th day of August, 1922, the petitioner herein was the record owner of 140 shares of the capital stock of the said Insurance Company, of where there were 10,000 shares, and respondent admits that on the said date, the petitioner appeared with an attorney and demanded of respondent that he be permitted to inspect the books of the Company and make extracts therefrom and that respondent then and there informed petitioner, on advice of counsel, that petition for a writ of mandamus being pending in the Supreme Court of the District of Columbia, being captioned, "Eugene Morgan vs. William M. Hoffman," Numbered: At Law No. 66848, in which said petition, Eugene Morgan, Petitioner herein, makes the identical averments as in the petition filed herein, regarding his right to inspect the said stock books, making extracts therefrom, your respondent would be unable to exhibit said books, until said mandamus proceedings Numbered 66848 would be disposed of by the Honorable Justices of said Court.

10 Further answering this respondent avers that on many occasions, before the 28th day of June, 1922, the petitioner appeared at the offices of the Company and harassed and annoyed the officers by making demands to inspect the books and intimations that the affairs of the company should be wound up, said demands and intimations being made to persons and officers other than respondent; that on or about the 3d day of June, the 4th day of June, and the 8th day of June, 1922, petitioner herein was so in the offices of said company; that on one of said days, the petitioner herein stated in a loud and boisterous manner in the hearing of certain officers of the Company, its employees and clerks, that the book

value of the stock of the Company was approximately \$30.00 per share, while he could not get more than between \$18 and \$20 on the market and that he, the petitioner, proposed to round up enough stockholders to liquidate the Company.

Further answering, respondent says that by virtue of petitioner's attitude, towards the company, its officers became distressed, annoyed and suspicious of his motives, particularly because, of late, and for the past eight years, certain persons known as speculators and of suspicious motives actuated by evil and ulterior designs have been attempting to secure lists of the stockholders of the more progressive and reliable Insurance Companies, for the purpose of causing and creating dissatisfaction among its stockholders in order that said persons and the interests they represent might secure control of said companies, and said persons have been attempting to demoralize and

11 wreck corporations engaged in the Insurance Business of the District of Columbia, as aforesaid, and it therefore, became necessary for the Board of Directors of the Firemen's Insurance Company of Washington and Georgetown, District of Columbia, to adopt on the 20th day of June, 1922, the following resolution:

"Whereas, attempts have been made in the past to secure information from the books of the Insurance Companies, through stockholders, for ulterior purposes, and,

Whereas, under existing conditions it is deemed inadvisable to allow such information to be circulated;

Now therefore be it resolved, by the Board of Directors of the Firemen's Insurance Company of the District of Columbia, that the officers and employees of the Company be and they are hereby directed to refuse to allow access to the records of the Company to any person, until such person has been identified as a stockholder of the Company and has produced his stock certificate unassigned, that upon such identification such stockholder shall be allowed to examine such books and records as he may desire, but shall not be allowed to make copies of such books or records."

Further answering, this respondent avers that he is informed and believes that on the occasion prior to the 5th day of August, 1922, the petitioner herein appeared at the offices of the Corporation, and upon his demand the books of the Company were turned over to him and he was given full, complete and exclusive opportunity to inspect the same and it then and there became manifest from the conduct and behavior of the petitioner herein, and the statements which he made, that the petitioner did not desire to inspect said books for any proper motive, but that he simply desired to copy the names and address of all the stockholders of the Company, which information he desired, this respondent has been informed and believes and

12 upon such information and belief charges, for the ulterior purpose of using the same in connection with and on behalf of some antagonistic interests to the aforesaid Company.

And this respondent charges that inasmuch as the motives of the petitioner are antagonistic to the interests of the Company and all other stockholders, this respondent is advised and believes and there-

fore states, that the extraordinary writ of mandamus should not be issued in aid of his designs.

Wherefore, respondent prays that the petition for the writ of mandamus be denied.

ALBERT W. HOWARD,
Respondent.

ARCHER & SMITH,
GODFREY L. MUNTER,
Attorneys for Respondent.

DISTRICT OF COLUMBIA, ss:

Albert W. Howard, being first duly sworn deposes and says that he has read the foregoing answer by him subscribed and knows the contents thereof, that the matters and things therein stated as of his own knowledge are true and those stated upon information and belief he believes to be true.

ALBERT W. HOWARD,

Subscribed and sworn to before me this 14th day of August, 1922.

MORGAN H. BEACH,
Clerk.

By CHAS. B. COFLIN,
Asst. Clk.

13

Demurrer to Return.

Filed August 18, 1922.

* * * * *

Now comes the Petitioner and says that the response or answer of the respondent is bad in substance.

JAS. E. PADGETT,
Attorney for Petitioner.

The matters of law intended to be argued are:

(1) That when the Firemen's Insurance Company filed its certificate in the office of the Recorder of Deeds, as shown by "Exhibit A" attached to the petition, it then and thereby became a body corporate with perpetual existence, and subject to all the duties and liabilities and provisions imposed by Subchapter IV of Chapter XVIII of the Code of Laws of said District.

(2) That it is immaterial what the motives of the petitioner are in demanding the privilege of inspecting and making extracts from the stock books of said Company, or whether the said respondent was or was not annoyed by the demands of said petitioner.

(3) It is immaterial to the issue involved, what action the board of directors may have taken with reference to the rights of the petitioner or other stockholders to examine said books; that said board has no jurisdiction over the same, so far as the rights and demands of the petitioner are concerned.

- 14 (4) That it is the right of the petitioner to examine and make extracts from said stock books, and the duty of the respondent to permit such examination and making of extracts therefrom.

Supreme Court of the District of Columbia.

Monday, November 13th, 1922.

Session resumed pursuant to adjournment, Hon. A. A. Hoehling, Justice presiding.

* * * * *

Upon consideration of the demurrer filed herein to the answer of respondent, it is ordered that said demurrer be and the same is hereby overruled. Exception is noted for petitioner.

Thursday, November 23rd, 1922.

Session resumed pursuant to adjournment, Hon. A. A. Hoehling, Justice presiding.

* * * * *

Comes now the petitioner by his attorney of record and elects to stand upon his demurrer to the answer herein.

Whereupon, it appearing that said demurrer was overruled on the 13th day of November, it is ordered that the petition be, and the same is hereby dismissed and it is considered that respondent go hence without day, be for nothing held and recover of petitioner his costs of defense to be taxed by the clerk and have execution thereof.

From the foregoing judgment, the petitioner by his said attorney in open court, notes an appeal to the Court of Appeals; whereupon, it is ordered that the maximum of an undertaking for costs
15 is hereby fixed in the sum of One Hundred Dollars (\$100.00), with leave to deposit the sum of Fifty Dollars (\$50.00) with the clerk in lieu thereof.

Memorandum.

December 7, 1922.—\$50 deposited in lieu of undertaking on appeal.

Assignment of Errors.

Filed January 3, 1923.

* * * * *

The plaintiff assigns the following errors of the Court in his appeal in the above entitled cause:

1. In overruling the demurrer of the plaintiff and dismissing the petition.
2. In not granting the relief prayed for in the petition.

3. In effect hold that Fireman Insurance Company is not subject to the provisions of Sub. Chapter IV of Chapter 18 of the Code, relating to Corporations.

JAS. E. PADGETT,
Attorney for Plaintiff.

Designation of Record.

Filed January 3, 1923.

* * * * *

The clerk in making up the record will please include the following papers:

1. The petition for plaintiff.
2. The response of defendant.
- 16 3. The demurrer of plaintiff to said response.
4. The order of the court overruling the demurrer and dismissing the petition.
5. Notation of appeal and making of deposit in lieu of bond.
6. Assignment of errors.
7. This designation of record.

JAS. E. PADGETT,
Attorney for Plaintiff.

17 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 16, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 66881 at Law, wherein Eugene Morgan is Petitioner and Albert W. Howard, Secretary of the Firemen's Insurance Company of Washington and Georgetown, D. C. is Respondent, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 11th day of January, 1923.

[Seal of Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
E. W. *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 3944. Eugene Morgan, appellant, vs. Albert W. Howard, secy., &c. Court of Appeals, District of Columbia. Filed Jan. 16, 1923. Henry W. Hodges, clerk.

Court of Appeals, District of Columbia

No. 3944

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

MAR 22 1923

Henry M. Hodges

CLERK.

EUGENE MORGAN, Appellant

vs.

ALBERT W. HOWARD,

Secretary of the Firemen's Insurance Company,
of Washington and Georgetown

BRIEF FOR APPELLEE

JAMES B. ARCHER,
JUSTIN MORRILL CHAMBERLIN,
JOHN LEWIS SMITH,

Attorneys for Appellee

Court of Appeals, District of Columbia

No. 3944

EUGENE MORGAN, *Appellant*,

vs.

ALBERT W. HOWARD, SECRETARY OF THE FIREMEN'S INSURANCE COMPANY OF WASHINGTON AND GEORGETOWN, D. C.

BRIEF ON BEHALF OF APPELLEE

STATEMENT OF CASE

This case is here on appeal from an order of a Justice of the Supreme Court of the District of Columbia, overruling the demurrer of the plaintiff, appellant here, to the answer and return of the respondent, appellee, and dismissing the petition of the plaintiff for a writ of mandamus.

Appellant in his statement of the case, states substantially the allegations of the petition, but fails to set forth the fact that "Exhibit A," (Record pages 3 and 4) is not a certificate of incorporation, but is

merely a certificate of the Firemen's Insurance Company of Washington and Georgetown, to become perpetual, under the provisions of Section 641 of the Code of Laws of the District of Columbia.

The answer and return of appellee denied that the Firemen's Insurance Company of Washington and Georgetown became a corporation under the terms and provisions of sub-chapter 4, Chapter 18, of the Code of Laws of the District of Columbia, and averred that the said corporation was chartered under a Special Act of Congress, and had its corporate existence continued by various acts of Congress, the last act granting additional powers, being approved by the President on the 18th day of February, 1911; that said corporation had always kept books of account and books containing the names of stockholders of the said Company, with their places of residence, the number of shares held by them, and the time when they became stockholders; that the said books have been kept in the custody of the respondent as Secretary of the said Company and that he had always been ready to afford access to any of the books of the said Company upon proper occasion, but averred that it was contrary to his obligation to the Company and its stockholders to furnish access to the said books to any stockholder seeking information for speculative, ulterior and improper motives. Appellee admitted that on the 5th day of August, 1922, petitioner appeared with an attorney and demanded that he be permitted to inspect the books of the Company to make extracts, and respondent then and there, upon advice of counsel, informed petitioner that a petition for a writ of mandamus being then pending in the Supreme Court of the District of Columbia, captioned "Eugene Morgan vs. William M. Hoffman," At Law

No. 66848, in which said petition, Eugene Morgan (appellant herein) made the identical averments as in the petition filed herein, regarding his right to inspect the said stock books, and that respondent would be unable to exhibit the said books, until the said mandamus proceeding was disposed of by said Court. Respondent further averred that on many occasions prior to June 28, 1922, petitioner had appeared at the offices of the Company and harassed and annoyed the officers by making demands to inspect the books and intimations that "the affairs of the company should be wound up," said demands and intimations being made to persons and officers other than respondent; that on or about the 3d, 4th and the 8th days of June, 1922, the petitioner was in the offices of said company that on one of said days, the petitioner stated that the book value of the stock of the Company was approximately \$30.00 per share, while he could not get more than between \$18 and \$20 on the market and that he, the petitioner, proposed to round up enough stockholders to liquidate the Company; that respondent and the officers of the Company became distressed and annoyed and suspicious of the motives of the appellant, because certain persons known as speculators and actuated by evil and ulterior designs had been attempting to secure lists of the stockholders of the more progressive and reliable insurance companies, for the purpose of causing and creating dissatisfaction among the stockholders in order that said persons and the interests they represented might secure control of said companies, and said persons had attempted to demoralize and wreck the insurance business in the District of Columbia, and that thereafter the Board of Directors of the Firemen's Insurance Company of Washington and Georgetown adopted a resolution provid-

ing certain conditions under which stockholders should be allowed to examine the books and records of the Company. Respondent further averred that the petitioner had appeared at the offices of the Corporation a short time prior to the 5th day of August, 1922, and upon his demand, the books of the Company were turned over to him and he was given full, complete and exclusive opportunity to inspect the same, that it then and there became manifest from the conduct and behavior of the petitioner and the statements he made that petitioner did not desire to inspect the said books for any proper motive but simply desired to copy the list of stockholders for the ulterior purpose of using the same in connection with and on behalf of some antagonistic interests to the Company. Respondent further charged that inasmuch as the motives of the petitioner were antagonistic to the interests of the Company and all other stockholders, that the extraordinary writ of mandamus should not be issued in aid of his designs.

Whereupon the petitioner demurred to the respondent's answer and upon said demurrer being overruled, counsel elected to stand upon same, and noted the appeal herein.

ARGUMENT

Third Assignment of Error

In view of the discussion of the assignments of error in inverse order adopted by the appellant in his brief, we will, for convenience, take them up in that order.

As set forth in the record pages two and three, The Firemen's Insurance Company of Washington and

Georgetown was created by Act of Congress of March 3d, 1837, and its life extended by various other acts of Congress until March 12th, 1908, when it filed its certificate to become perpetual under the provisions of Section 641 of the Code of the District of Columbia. All of the power and authority of the said corporation was derived originally from the said Special Act of Congress, March 3, 1837, and from the subsequent Special Acts, the last being approved by the President on February 18, 1911. It is respectfully submitted that Section 641 merely removes the necessity for corporations at various intervals to obtain special acts of Congress extending their life and does not, nor was it intended to, either extend or limit the powers, rights or authority of any Insurance or Title Company, and that any enlargement of the said rights or powers would necessarily have to be granted by Congress, as was done in the case of this Company by the Act of Congress of February 18, 1911. That no additional rights are granted said Company by Section 641 is further supported by the fact that Sub-chapter 4 contains no provisions regulating or controlling insurance or title companies in the District of Columbia, such companies being governed and controlled by Sub-chapter 5 of the Code. The provisions of Section 607, Sub-chapter 4, referred to by appellant clearly relate to and grant corporate powers to persons filing an original certificate of incorporation, and we submit have application only to such companies formed under its provisions.

In the case cited by the appellant, in re: Margaret Turley, reported in 20 D. C., 315, the interpretation of an Act of Congress of October 4, 1890, 26 Statutes, page 625, providing for the incorporation of trust,

loan, mortgage and certain other corporations within the District of Columbia, was involved. The language of the Statute, which is entirely dissimilar to Section 641 of the Code, is as follows:

“Sec. 11. That any safe deposit company, trust company, or surety or guarantee company, or title insurance company, now incorporated and operating under the laws of the United States or of the District of Columbia, or any of the States, and now doing business in said District, may avail itself of the provisions of this act on filing in the office of the recorder of deeds of the District of Columbia, or with the Comptroller of the Currency, a certificate of its intention to do so, which certificate shall specify which one of the three classes of business set out in section one it will carry on, and shall be verified by the oath of its president to the effect that it has in every respect complied with the requirements of existing law, especially with the provisions of this act; that its capital stock is paid in as provided in section twenty-one of this act and is not impaired, and thereafter such company may exercise all powers and perform all duties authorized by any one of the subdivisions of section one of this act in addition to the powers now lawfully exercised by such company.”

It can readily be seen that in this statute, it is expressly provided that such existing companies “may avail themselves of the provisions of this act,” while in the case at issue, Section 641 is restricted to making a corporation perpetual.

Appellee does not contend that its corporate existence was extended by the Act of Congress of February 18th, 1911, it having been made perpetual by the filing

of its certificate under Section 641 in 1908, but does contend that all of the rights and powers of the said corporation were granted by the various special acts of Congress in question and that Section 641 extends to it no more than the right to become perpetual, the other provisions of Sub-chapter 4 having no application.

First Assignment of Error

In approaching a discussion of the first assignment of error, we desire to call attention to the fact that this is not a case of the denial by appellee of the inspection of the books of the Firemen's Insurance Company of Washington and Georgetown, as the record clearly shows (pages 6 and 7) that prior to the 5th day of August, 1922, the date upon which respondent avers appellant was told that the respondent would be unable to exhibit said books until a certain mandamus proceeding then pending which had been instituted by appellant against William M. Hoffman, President of the said corporation, involving the same question, had been disposed of, that appellant had been given "full, complete and exclusive opportunity" to inspect the books and records.

The provisions of Section 627, 628 and 631 of the Code being applicable only to corporations "formed under" Sub-chapter 4, the obligation of the appellee was, it is submitted, governed by the common law rule to submit such books for the inspection of a stockholder desiring same for a proper purpose.

Fletcher, Cyclopedia of Corporations, Section 4086.

Morawetz on Private Corporations, Section 473.

Guthrie vs. Harkness, 199 U. S., 148.

Second Assignment of Error.

Appellant both in the Court below and in his brief filed herein bases his contention on the absolute right granted under the provisions of the Code and makes no attempt to show that the purpose of appellant was a proper one. In demurring to the return, we submit that the allegations of the improper purpose of the petitioner are admitted. This, we submit, brings the case clearly within the common law rule that a stockholder has a right to inspect and examine the books and records of the corporation at a proper time and place and for a proper purpose.

Guthrie vs. Harkness, 199 U. S., 148.

Fletcher Encyclopedia of Corporations, Section 4086.

Morawetz on Private Corporations, Section 473.

In the answer and return, it is alleged (pages 6 and 7) appellant on various occasions in the offices of the company stated that he proposed to wind up or liquidate the company because he could not get as much for his stock on the market as it was worth. It was further alleged that appellant (pages 3 and 7) did not desire to inspect the books for any proper purpose, but desired the names of the stockholders for the ulterior purpose of using same on behalf of antagonistic interests to the said company. The extreme danger of such an attempt in view of the hazardous nature of the insurance business, made it the duty of the appellee to protect the interests of the company and its stockholders.

The fact that petitioner had been given (record page 7) "full, complete and exclusive" opportunity

to examine and inspect the books on a prior occasion, and that his threats, because he could not obtain on the market as much for his stock as he believed it to be worth, savors strongly of the character of efforts referred to by Mr. Justice Day in the case of Guthrie vs. Harkness, 199 U. S. 148, in which he says:

“* * * The writ should not be granted for speculative purposes, or to gratify idle curiosity, or to aid a blackmailer, but it may not be denied to the stockholder who seeks the information for legitimate purposes.”

Under the terms of the charter, the resolution set forth at page 7 of the record, was a proper exercise of the authority of board of directors of the Firemen's Insurance Company of Washington and Georgetown.

The contentions of the appellant in the court below and in his brief, are based solely upon the provisions of certain sections of the Code of Laws of the District of Columbia, which, we submit, are not applicable to the issue involved herein. The petitioner is therefore left to rely on the common law rule of a stockholder which requires that the inspection be for a proper purpose, which is supported by the unanimous decisions in practically every State in which statutory restrictions have not been adopted, and the allegations of the answer and response having been admitted by the demurrer, we submit that there is no error in the ruling of the Court below.

Respectfully submitted.

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JUSTIN MORRILL CHAMBERLIN,
JOHN LEWIS SMITH,
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